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16 Attorneys for Plaintiff

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 J.P., by and through his Guardian  
20 Ad Litem, SHANNON VILLANUEVA

21 Plaintiff,  
22 v.

23 COUNTY OF ALAMEDA, DIANE DAVIS  
24 MAAS, SUE MAY, TRIAD FAMILY  
25 SERVICES, MARIA REFUGIO MOORE,  
26 and DOES 1-30, inclusive.

27 Defendants.

28 Case No: 4:17-cv-05679-YGR

PLAINTIFF'S RESPONSE TO COUNTY  
DEFENDANTS' OBJECTION TO THE  
ADJUDICATION OF DEFENDANT  
TRIAD'S MOTION FOR SUMMARY  
JUDGMENT

Date:  
Time: 2:00 p.m.  
Courtroom: 1, 4<sup>th</sup> Floor, 1301 Clay Street,  
Oakland, CA  
Judge: The Hon. Yvonne Gonzalez Rogers

Complaint Filed: October 2, 2017  
Trial Date: TBD

1 Plaintiff J.P. by and through his Guardian Ad Litem Shannon Villanueva responds to the  
 2 County Defendants' Objection to the Adjudication of Triad's Motion for Summary Judgment  
 3 (Dkt. 127), joined by Triad Family Services, as follows.

4 The County Defendants seek a Court order to defer adjudication of Triad's motion until  
 5 the Ninth Circuit rules on their pending appeal, jurisdiction as to all claims returns to this Court,  
 6 and, discovery has closed as to all parties. The County Defendants contend their objection should  
 7 be granted on two grounds: (1) lack of opportunities to engage in litigation; and, (2) potential for  
 8 conflicting rulings. J.P. objects to the requested remedies and theories, while acknowledging and  
 9 respecting the Court's discretion to manage its calendar.

10 First, the lack of "opportunity" theory is based on a purported "inability" as opposed to a  
 11 selected litigation strategy. The County Defendants elected to delay their rights to: (a) assert  
 12 affirmative defenses; (b) file a cross claim; or (c) engage in discovery. By filing a motion to  
 13 dismiss rather than an answer, an interlocutory appeal contending more issues were before the  
 14 Ninth Circuit than the papers set forth, seeking to stay discovery in this Court, and opting to take  
 15 the position until now that this Court lacked jurisdiction over the County Defendants, they waived  
 16 prejudice arguments as to these alleged lost "opportunities."

17 Moreover, J.P. has no negligence claim pending against the County Defendants. J.P.'s  
 18 claims against the County Defendants are for violations of the Fourteenth and First Amendments  
 19 of the United States Constitution. The County cannot seek indemnity for its violation of J.P.'s  
 20 civil rights. *Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO*, 451 U.S.  
 21 77, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981) (holding that courts are not free to read a cause of  
 22 action for indemnity into statutes where no statutory basis exists for such a claim); *Banks v. City*  
 23 *of Emeryville*, 109 F.R.D. 535, 539 (N.D. Cal. 1985) (holding that § 1983 provides no right of  
 24 contribution or indemnity).

25 Second, Triad's summary-judgment motion raises two discrete issues that are *unrelated* to  
 26 the standing issue before the Ninth Circuit based on *Ward v. San Jose*, 967 F. 2d 280 (9th Cir.  
 27 1991). Triad was permitted to move and only did move on state action and negligence. The  
 28

1 County Defendants allege rulings by this Court as to both issues will unduly prejudice them based  
2 on false factual and legal premises.

3 As to state action, this Court may only rule on the evidence before it. Should the County  
4 wish to later argue based on different evidence that state action fails, it will have the opportunity  
5 to do that once they have exhausted their appeal opportunities. The County Defendants'  
6 arguments as stated are also illogical. On the one hand, the County Defendants wish to argue  
7 against a "notion" that Triad was a County agent. On the other, they seek to avoid having to  
8 "shoulder any blame" that might otherwise be assigned to Triad. Yet the Court and the trier of  
9 fact will have to evaluate blame as to each defendant separately. This is a motion, not a trial.

10 As to negligence, the County Defendants erroneously contend both courts are evaluating  
11 the "same essential damages arguments." To begin, the negligence issues before this Court are  
12 *not* based on damages. Triad's undisputed fact as to its negligence issue is that J.P. suffered  
13 extreme emotional distress. (Separate Statement in Support of Triad Family Services' Motion for  
14 Summary Judgment (Dkt. 117-1, Issue 2, Fact 2.) As to any new issue the County Defendants  
15 raised to the Ninth Circuit in their Reply brief based on a purported theory of "bystander and  
16 direct victim" section 1983 claims, that is not properly before any court, yet, and, does not trigger  
17 any "inconsistent ruling" potential on damages. Any damage arguments the County Defendants  
18 wish to make based on evidence at trial or a subsequent summary-judgment motion they bring  
19 once the matter returns to this Court will be based on evidence then presented.

20 Finally, this objection was filed May 20, 2019 to delay a schedule set in the Fall of 2018.  
21 Absent diligence, good faith, new law or facts, it appears the only opportunity being sought by  
22 these County Defendants, again, is to improperly delay these proceedings.

23 Dated: May 31, 2019

Respectfully Submitted,

24 SCOTT LAW FIRM

25 /s/ Lizabeth N. de Vries

26 Lizabeth N. de Vries  
27 Attorney for Plaintiff